

Majel M. Russell (MT Bar #4057)
Daniel S. Wenner (MT Bar
#42335071)
ELK RIVER LAW OFFICE, PLLP
P.O. Box 928
Billings, MT 59101
Ph: 406-259-8611 | Fax: 406-259-3251
Email: mrussell@elkriverlaw.com
dwenner@elkriverlaw.com

Reid Peyton Chambers (admitted *pro hac vice*)
Frank S. Holleman (admitted *pro hac vice*)
Matthew L. Murdock (admitted *pro hac vice*)
SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY, LLP
1425 K St, NW, Ste 600
Washington, DC 20005
Ph: 202-682-0240 | Fax: 202-682-0249
Email: rchamber@sonosky.com
fholleman@sonosky.com
mmurdock@sonosky.com

*Attorneys for the Assiniboine and Sioux
Tribes of the Fort Peck Indian
Reservation*

Mark Steger Smith
Assistant U.S. Attorney
U.S. ATTORNEY'S OFFICE
2601 Second Avenue North, Ste 3200
Billings, MT 59101
Ph: 406-247-4667 | Fax: 406-657-6058
Email: mark.smith3@usdoj.gov

Jean E. Williams
Deputy Assistant Attorney General

Luther L. Hajek (CO Bar #44303)
Marissa A. Piropato (MA Bar
#651630)
UNITED STATES DEPARTMENT
OF JUSTICE
Environment & Natural Resources Div.
999 18th St., South Terrace, Ste 370
Denver, CO 80202
Ph: 303-844-1376 | Fax: 303-844-1350
Email: luke.hajek@usdoj.gov
marissa.piropato@usdoj.gov

Attorneys for Federal Defendants

Jeffery J. Oven
Mark L. Stermitz
Jeffrey M. Roth
CROWLEY FLECK PLLP
490 North 31st Street, Ste 500
P.O. Box 2529
Billings, MT 59103-2529
Telephone: 406-252-3441
Email: joven@crowleyfleck.com
mstermitz@crowleyfleck.com
jroth@crowleyfleck.com

Peter C. Whitfield (admitted *pro hac vice*)
Kathleen Mueller (admitted *pro hac vice*)
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005
Ph: 202-736-8000
Email: pwhitfield@sidley.com
kmueller@sidley.com

*Attorneys for TransCanada Keystone
Pipeline, LP and TC Energy
Corporation*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

THE ASSINIBOINE AND SIOUX
TRIBES OF THE FORT PECK INDIAN
RESERVATION,

Plaintiff,

vs.

THE UNITED STATES DEPARTMENT
OF THE INTERIOR, et al.,

Defendants,

and

TRANSCANADA KEYSTONE
PIPELINE, LP and TC ENERGY
CORPORATION,

Defendants-in-Intervention.

No. 4:20-cv-00044-BMM-JTJ

**STIPULATION AND JOINT
CASE MANAGEMENT
PLAN**

Pursuant to the Court's Order of August 3, 2020, ECF No. 25, the Parties hereby jointly file the following Stipulation and Joint Case Management Plan. In support of this plan, the Parties state as follows:

1. The Parties agree that this case is a civil action for declaratory and injunctive relief brought under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

2. The Parties agree that Plaintiff's claims will be resolved through motions for summary judgment that will be decided on an administrative record. As such, the Parties stipulate that deadlines for discovery are not necessary at this time. Pursuant to L.R. 16.2(a), an action for review on an administrative record is exempt from preliminary pretrial statements, discovery plans, stipulations of fact, or related requirements of L.R. 16.2, unless otherwise ordered by the Court. If joinder of additional parties or amendment of pleadings makes discovery necessary or otherwise makes the requirements of L.R. 16.2 applicable – which the Parties do not anticipate – the Parties will meet and confer to develop a discovery schedule. If they are unable to reach agreement on a discovery schedule, they will jointly request the Court's assistance.

3. A stipulation to authenticity and foundation is not appropriate for this case because this case is a challenge to administrative agency actions and will be resolved on cross-motions for summary judgment without discovery or trial.

4. The Parties agree that this case is not suitable for an alternative dispute resolution (“ADR”) program such as arbitration, mediation, or judicial settlement conference.

5. The Parties agree that this case can be resolved without a trial.

6. The Parties outline the following proposed case management schedule, but reserve their rights to seek later amendments, either jointly or unilaterally.

WHEREFORE, the Parties respectfully request that this Court issue an order approving the following briefing schedule for resolution of this case:

A. Federal Defendants shall compile and provide the administrative record to Plaintiff and Defendants-in-Intervention on or before October 9, 2020. The administrative record may be submitted on electronic media.

B. If there are any disputes over the contents of the administrative record, the Parties shall seek to informally resolve them by October 30, 2020. If the Parties are unable to resolve any disputes over the administrative record informally, the Parties will have until November 6, 2020, to file any motions objecting to the contents of, or seeking to supplement, the administrative record.

C. Federal Defendants shall lodge the administrative record with the Court, and serve any revisions on counsel for Plaintiffs and Defendants-in-Intervention, if necessary, as soon as Parties agree there are no remaining disputes or that they will be unable to resolve their disputes, but in any event no later than October 30, 2020.

D. Briefing Schedule: The Parties propose that the case be resolved by staggering briefing on cross-motions for summary judgment, where the Plaintiff will file a motion for summary judgment and Defendants and Defendants-in-Intervention will file cross-motions with combined opening/response briefs. The Plaintiff shall file a motion for summary judgment and supporting brief no later than forty-five

(45) days after the lodging of the complete administrative record. Federal Defendants shall file a motion with combined opening/response brief within forty-five (45) days of Plaintiff's filing, with Defendants-in-Intervention filing a motion with combined opening/response brief within fifty-five (55) days of Plaintiff's filing. Plaintiff shall file one combined response reply brief to Federal Defendants' and Defendants-in-Interventions' opening/response within thirty (30) days of the filing of Defendants-in-Intervention's combined opening/response brief. Federal Defendants shall file a reply to Plaintiff's response within twenty-eight (28) days of the filing of Plaintiff's combined response reply. Defendants-in-Intervention shall file a reply within thirty-five (35) days of the filing of Plaintiff's combined response(reply. The Parties reserve the right to seek adjustments to this proposed schedule as appropriate.

E. Word Limits: Given the number of claims and complexity of the facts in the case, the Parties request that the word limits for briefs filed pursuant to Paragraph D, *supra*, be as follows, while reserving their right to seek any further requests for expanded word limits:

- a. Plaintiff's brief in support of motion for summary judgment:
13,000 words.
- b. Federal Defendants' and Defendants-in-Intervention's combined opening/response briefs: 13,000 words each.

- c. Plaintiff's combined response/reply brief: 13,000 words
- d. Federal Defendants' and Defendants-in-Intervention's reply
briefs: 7500 words each.

DATE: September 1, 2020

Respectfully submitted,

By: s/ Daniel S. Wenner

Majel M. Russell
Daniel S. Wenner

s/ Frank S. Holleman

Reid Peyton Chambers
Frank S. Holleman
Matthew L. Murdock
Counsel for Plaintiffs

By: s/ Luther L. Hajek

Mark Steger Smith
Jean E. Williams
Luther L. Hajek
Marissa A. Piropato

Counsel for Federal Defendants

By: s/ Peter C. Whitfield

Jeffery J. Oven
Mark L. Sermitz
Jeffrey M. Roth
Peter C. Whitfield
Kathleen Mueller

Counsel for Defendants-in-Intervention

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2020, I electronically filed the above and foregoing document with the Clerk of Court via the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the parties registered to receive such service.

s/ Frank S. Holleman
Frank S. Holleman